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J. DESMOND KENNEDY (1897-1974)
ROBERT E. O'BRIEN (1912-1975)
JAMES E. O'BRIEN (1912-1994)

JAMES E. O'BRIEN, JR

May 13, 2008

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch St.
Philadelphia, PA 19103-2029

Dear Sir or Madam:

Re: 3WC32
Clean Air Complaint and Notice of
Opportunity for Hearing
EPA Docket No. CAA-03-2008-0148

Enclosed is Answer to Complaint together with Affirmative Defense by way of New Matter for filing in the above action on behalf of defendant/respondent, Diocese of Scranton.

A copy of the Answer was previously served on Benjamin Cohan (3RC10) and PDG, Inc., on May 1, 2008, per copy of letter enclosed.

Very truly yours,


James E. O'Brien, Jr.

amk
enc.
cc w/o enc.: Benjamin Cohan
PDG, Inc.

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May 1, 2008

Mr. Benjamin Cohan (3RC10)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Mr. Cohan:

Re: 3WC32
Clean Air Act Complaint and Notice of
Opportunity for Hearing
EPA Docket No. CAA-03-2008-0148

Enclosed is Answer to Complaint together with Affirmative Defense by way of New Matter for filing in the above action on behalf of defendant/respondent, Diocese of Scranton.

Very truly yours,


James E. O'Brien, Jr.

amk
enc.
cc w/enc.: PDG, Inc.
1386 Beulah Road
Building 801
Pittsburgh, PA 15235

IV. GENERAL ALLEGATIONS

16. Admitted.

17. Admitted.

18. The allegations in paragraph 18 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

19. Admitted.

20. The allegations in paragraph 20 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

21. Admitted.

22. Admitted.

23. - 26. The allegations in paragraphs 23 through 26 are directed to defendant, PDG. PDG was hired by the Diocese and was under contract with the Diocese to perform abatement services as described in their contract. The truth or falsity of the allegations in paragraphs 23 - 26 are not known by defendant/respondent Diocese. Diocese defers to the Complaint and the answers provided by PDG to these allegations. Strict proof of the allegations are demanded. The allegations are not admitted by respondent Diocese of Scranton.

27. The allegations in paragraph 27 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

28. The allegations in paragraph 28 are directed to defendant, PDG. PDG was hired by the Diocese and was under contract with the Diocese to perform abatement services as described in their contract. The truth or falsity of the allegations in paragraph 28 are not known by defendant/respondent Diocese. Diocese defers to the Complaint and the answers provided by PDG to these allegations. Strict proof of the allegations are demanded. The allegations are not admitted by respondent Diocese of Scranton.

29. The allegations in paragraph 29 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

30. The allegations in paragraph 30 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

31. The allegations in paragraph 31 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

V. VIOLATIONS

COUNT I

FAILURE TO ADEQUATELY WET RACM DURING THE STRIPPING OPERATION

32. Respondent, Diocese of Scranton, realleges the answers in paragraphs 1 through 31, above, as though fully set forth.

33. The allegations in paragraph 33 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

34. Denied that stripped RACM was very dry and, therefore, not adequately wetted pursuant to 40 C.F.R. §61.145(c)(3). It is further denied that RACM was being stripped while dry. Rather, PDG was hired by the Diocese and was under contract with the Diocese to perform services as described in their contract. The truth or falsity of the allegations in paragraph 34 are not known by defendant/respondent Diocese. Diocese defers to the Complaint and the answers provided by PDG to these allegations. Strict proof of the allegations are demanded. The allegations are not admitted by respondent Diocese of Scranton.

35. Denied Respondents failed to comply with the requirements of 40 C.F.R. §61.145(c)(3) as alleged or that there was any violation of §112 of the CAA, 42 U.S.C. §7412.

COUNTS II & III

FAILURE TO KEEP STRIPPED RACM
ADEQUATELY WET UNTIL COLLECTED FOR DISPOSAL

36. Respondent, Diocese of Scranton, realleges the answers in paragraphs 1 through 35, above, as though fully set forth.

41. Complaint skips from paragraph 36 to 41.

41. The allegations in paragraph 41 contain conclusions of law to which no specific answer is required. Strict proof of the allegations are demanded of the Complainant.

42. Admitted in part; denied in part. Denied any violation of 40 C.F.R. §61.145 (c)(6)(i) occurred. As to the facts relating to the July 24 and August 28, 2007 inspections, PDG was hired by the Diocese and was under contract with the Diocese to perform abatement services as described in their contract. The truth or falsity of the allegations in paragraph 42 are not known by defendant/respondent Diocese. Diocese defers to the Complaint and the answers provided by PDG to these allegations. Strict proof of the allegations are demanded. The allegations are not admitted by respondent, Diocese of Scranton.

43. Denied any violation of 40 C.F.R. §61.45(c)(6)(i) occurred and further denied that there were two (2) separate "per day" violations of Section 112 of the CAA, 42 U.S.C. §7412.

VI. PROPOSED CIVIL PENALTY

It is denied any violations occurred and it is denied that any civil penalties are due. In further answer, Respondent, Diocese of Scranton, alleges that if any fines or penalties are due they are improperly determined in this administrative Complaint and should be substantially less than proposed. Respondent, Diocese of Scranton's history of compliance and actions taken to comply with all requirements of law should be considered as well as the seriousness of these alleged violations all of which would tend to mitigate the damages to be assessed against the parties. The Diocese of Scranton is a 501(c)(3) non-profit entity which performs many charitable works and any violation of any law would have been inadvertent and unintentional.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent, Diocese of Scranton, does hereby request a hearing to contest matters set forth in this administrative hearing.

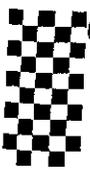
AFFIRMATIVE DEFENSES

NEW MATTER
OF
DEFENDANT, DIOCESE OF SCRANTON

1. In addition to the Abatement Contract with PDG, wherein PDG was responsible for the removal and disposal of all asbestos-containing materials, the Diocese also contracted with Quad 3 to do air monitoring and project oversight for the abatement. The Diocese relied on the expertise of Quad 3 as well as the expertise of PDG to complete the project. Failures to carry out proper abatement, if any, were those of PDG and/or Quad 3 and not the Diocese of Scranton.

Respectfully submitted,


James E. O'Brien, Jr., Esq.
610 Scranton Life Building
538 Spruce Street
Scranton, PA 18503
Attorney for Defendant, Diocese of Scranton



VERIFICATION

I hereby verify that the facts set forth in the foregoing Answer to Complaint are true and correct according to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Frank Semanski 5/2/08

Frank Semanski
Facilities Manager
Diocese of Scranton
300 Wyoming Ave.
Scranton, PA 18503

